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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

U.S. DEPARTMENT OF COMMERCE  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Advanced Television Systems ) MM Docket No. 87-268  
And Their Impact Upon The Existing )  
Television Broadcast Service )

To: The Commission

**OPPOSITION TO PETITION FOR RECONSIDERATION**

The Maryland Public Broadcasting Commission, through its attorneys, hereby opposes the Petition for Reconsideration filed in this proceeding by Ruarch Associates Limited Partnership (Ruarch).

1. The Maryland Public Broadcasting Commission operates a statewide network of six full-service public television stations serving the State of Maryland, known collectively as Maryland Public Television (MPT). Those stations include noncommercial educational Station WFPT, Frederick, Maryland. Station WFPT operates on NTSC Channel 62 and has been allotted DTV Channel 28. That is an in-core allotment which will give the station a permanent DTV home.

2. Ruarch is licensee of low-power television Station W28AZ at Winchester-Front Royal, Virginia. It is concerned that its Channel 28 operations will be displaced by operation of Station WFPT on Channel 28. Ruarch's petition, under the mistaken impression that Station WFPT operates now on NTSC Channel 63, asks the Commission to allot DTV Channel 62 for Station WFPT instead of DTV Channel 28. Ruarch thus mistakenly proposes to allot for Station WFPT the same channel for DTV broadcasting on

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which it broadcasts in NTSC. Ruarch's engineering statement, however, proposes that Station WFPT be allotted DTV Channel 63. It is hard to know what Ruarch wants from its mixed-up presentation, but it seems likely that Ruarch seeks substitution of DTV Channel 63 for DTV Channel 28, as stated in its engineering showing. Ruarch states that "there is an alternate channel available for WFPT which would allow that station an equal coverage ... with no degr[a]dation." Ruarch then suggests that MPT would conserve public funds by operating on a DTV channel adjacent to its NTSC channel, because MPT could diplex the signals. Finally, it notes that "[a]ssignment of channels in the 60-69 band for DTV has been authorized in exigencies."

3. Adoption of Ruarch's proposal would be a catastrophe for MPT, Frederick area public television viewers, and the State of Maryland. The Ruarch proposal would relegate Station WFPT to a channel which is out-of-core and slated for extinction. Public broadcasters will be hard-pressed to pay for one DTV conversion. At best, temporary operation on Channel 63 would subject MPT to double costs of DTV conversion and prevent MPT from planning for the long-term operation of the channel. At worst it would leave MPT without a ultimate home for Frederick's only television station. The effect of the action proposed by Ruarch would be to assure its secondary service station a permanent DTV berth while leaving the future of MPT's full-service public station in doubt.

4. In key respects the Ruarch petition is not supported by the associated engineering statement. Ruarch's engineering statement represents that "[s]hould no alternative LPTV channel be available in Winchester, W28AZ will have to shut down completely." Yet Ruarch has apparently made no effort to identify an alternative LPTV channel. Instead it casually proposes an extraordinary and damaging change in MPT's allotment.

Moreover, while Ruarch's petition claims that Channel 63 could be assigned to MPT with equal coverage and no degradation, its engineering statement pointedly states that

...we did not conduct a detailed study of this alternative DTV channel with respect to replication of NTSC coverage, nor did we calculate interference areas between and among DTV and NTSC facilities...

and notes that "further study of Ruarch's proposed alternative allotment may be required...". Ruarch's assurances that a Channel 63 allotment would provide the same coverage and freedom from interference as Channel 28 are apparently based on a report by an industry group which looked only at whether alternate allotments could be made and not at their suitability. Those assurances are not supported by the findings of Ruarch's own engineers.

5. The Commission's rules and policies protect full-service stations, not LPTV stations. Section 74.702(b) provides that:

Changes in the TV Table of Allotments or Digital Television Table of Allotments (§§73.606(b) and 73.622(a), respectively, of Part 73 of this chapter), authorizations to construct new TV broadcast analog or DTV stations or to change facilities of existing such stations, may be made without regard to existing or proposed low power TV or TV translator stations. Where such a change results in a low power TV or TV translator station causing actual interference to reception of the TV broadcast analog or DTV station, the licensee or permittee of the low power TV or TV translator station shall eliminate the interference or file an application for a change in channel assignment pursuant to §73.3572 of this chapter.

MPT's station is a primary station. Ruarch's station is a secondary station. Ruarch was on notice when it filed its application for construction permit in 1982 that it was building its business as a secondary service. Yet Ruarch seeks to solve its problem by destroying the future of MPT's station.

6. The Commission determined the proper balance between primary full-service stations and secondary LPTV stations when it first established the low-power television service:

While we agree with parties averring that low power stations can provide needed and meaningful service, we point out that the coverage obligations to which we subject full service stations specifically are designed to ensure maximum service to the public, beyond what we shall require of low power. This fact ... constrains us to ensure the continued primacy of full service stations by emphasizing the secondary status of low power stations."

51 RR2d 476, 488 (1982). Throughout the ATV/DTV proceedings the Commission has noted that insufficient spectrum exists to accommodate digital channels for full-service stations and preserve all low-power and translator television service. Low-power operators have been on a notice from early on in these proceedings that displacement of low-power stations might be necessary. In March 1991, the Commission imposed a partial freeze on new low-power station applications in major urban markets. The public notice announcing the freeze stated that low-power operations would "continue to have secondary status with regard to the introduction of ATV service" and specifically noted "[i]t is possible that some of these secondary stations may be displaced in channel if and when the spectrum is needed by full-service television stations for ATV use." Notice of Limited Low Power

Television/Television Translator Filing Window: April 29, 1991 through May 3, 1991, fn 1, released March 12, 1991.

7. Later in the DTV proceedings the Commission confirmed the status of LPTV in the transition by deciding to continue "LPTV and translators' secondary status vis-a-vis ATV stations." Second Report and Order/Further Notice of Proposed Rule Making, 7 FCC Rcd 3340, 3351 at para. 40. In that order, the Commission noted that

the low-power television service was established for the specific purpose of supplementing conventional broadcast station coverage and we have always considered low-power stations secondary. The low-power service thus has had ample notice that it would have to yield to any full-service stations, without exception for the specific mode in which the full-service station transmits." Id.

8. In the Sixth Report and Order the Commission expressed concern about the impact of DTV implementation on low-power services, but decided to "maintain the secondary status of low power stations". Sixth Report and Order, para 142. The Commission has thus consistently and repeatedly since the creation of the LPTV service declared it to be secondary. Ruarch has not sought reconsideration of that policy determination. Its proposal to put MPT at a terrible disadvantage in order to preserve a secondary service ignores 15 years of consistent policy determinations. While Ruarch notes that DTV assignments can be made above Channel 60 to meet "exigencies", there quite simply is no exigency presented here.

9. The Commission has taken steps in the Sixth Report and Order to avoid or mitigate loss of LPTV service. It has provided for preferential treatment of LPTV channel displacement applications. It will allow operation of displaced LPTV stations on Channels

60 to 69 on a secondary basis. It has relaxed the technical rules to facilitate the selection of LPTV alternate channels. Ruarch's efforts would be better directed to utilization of these methods to seek a new channel. In fact, it may want to consider proposing operation of its LPTV station in the Channel 60 to 69 band.

For the foregoing reasons, Ruarch's petition for reconsideration should be denied.

Respectfully submitted,

MARYLAND PUBLIC BROADCASTING  
COMMISSION

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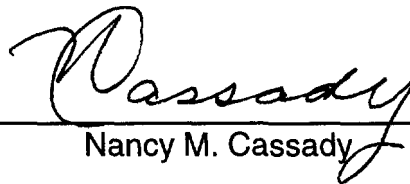
Its Attorneys

July 18, 1997

## CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the law offices of Schwartz, Woods & Miller, hereby certify that I have on this 18th day of July, 1997, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to the following:

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